

### **REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested in view of the forgoing amendments and the following remarks.

The status of the claims is as follows:

Claims 1-15 – pending and rejected.

The examiner has rejected claims 1, 2, 6-7, 11, and 13 under 35 U.S.C. §102(e) based on the publication document of the instant application, hereafter the “‘189 publication.” This rejection is traversed.

Apparently the examiner believes that applicants have made an admission of prior art in the first column of the ‘189 publication. Applicant firmly disagrees with the examiner’s characterization of the language in column 1 of the ‘189 publication. The numbered paragraphs referenced by the examiner in the details of the rejection are actually a restatement of the present invention, not a characterization or admission of prior art. This is clear from the language at the beginning of paragraph 0002, “More particularly the invention relates to ....” Even though this is under a heading stating the Field of the Invention, it is clear that the description in paragraphs 0002 to 0012 are a brief statement of the present invention, not a description of prior art. This is obvious by comparing the language in these paragraphs to claim 1 as filed. Furthermore, the language in paragraph 0014 makes this even clearer by referencing a particular Japanese published document as prior art. For there to be an admission, it must be clear and unmistakable. The language cited by the examiner is not clearly an admission and clearly is applicants’ own work. Under MPEP §2129, applicant’s own work cannot be used as an admission, even if it had the label “Prior Art” affixed to it. For these reasons, the rejection of claims 1, 2, 6-7, 11 and 13 under 35 U.S.C. §102(e) is improper and should be withdrawn.

In the official action, the examiner has also rejected claims 3-5, 8-10, 12, and 14-15 under 35 U.S.C. §103(a) based on the ‘189 application, either alone or taken with other documents including Malik, U. S. Patent No. 6,574,324 (claims 3-5), Oliver, U.S. Publication No. 2004/0127189 (claim 8), Mauney, et al., U. S. Publication No. 2005/0032475 (claim 9),

Cronin et al., U. S. Patent No. 5,995,589 (claim 10), Woods et al, U. S. Publication No. 2003/0114899 (Claims 14-15). These rejections are traversed.

Because each of the above mentioned rejections under 35 U.S.C. §103(a) is premised on the '189 application as a primary document, these rejections are no longer appropriate. None of the secondary documents without the '189 application render the referenced claims obvious. For at least these reasons, these rejections are no longer warranted and should be withdrawn.

The examiner's attention is directed to the Information Disclosure Statement filed with this response. The German utility model discloses a portable electronic apparatus that may be worn around the neck of the user. The necklace 2 may include a microphone 9 built into the necklace. It is contended that the claims now pending are patentable in view of this German utility model.

It is now believed this application is in condition for allowance. Such action at an early date is requested. If there are small matters that could be clarified to advance allowance, the examiner should call the undersigned.


Reconsideration and allowance of the foregoing claims are respectfully requested.

**Deposit Account Authorization**

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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